

Guidance for Implementation of Significant Changes to Chapter 425
The Maine Asbestos Management Regulations – Effective January 2003

Chapter 425, the Maine Asbestos Management Regulations effective January __, 2003 contain significant changes that directly affect how abatement professionals perform their work. This document highlights the issues that DEP program personnel have identified as likely to arise for professionals when attempting to implement the new rules.

The new rule includes provisions that are tailored to the level of risk associated with handling different asbestos-containing materials in certain ways. To help the regulated community understand which requirements apply in specific circumstances, Section A presents an overview of the general requirements for different types of asbestos abatement activities.

Section B addresses more specific issues raised by changes in the rule, and is presented in a “Frequently Asked Questions” format roughly in the order that topics appear in the regulation. Please note that this section is not intended to include questions about all changes in the rule, but is limited to those changes on which the regulated community has already asked questions of DEP field staff. The “Chapter 425 Response to Comments” document addresses additional questions and comments that were raised during the DEP’s formal rule-making process; this document is available on-line at www.state.me.us/dep/rwm/asbestos/index/htm and in hard-copy by calling (207)287-7751.

Please note that the new Chapter 425 is effective as of January , 2003. Asbestos abatement activities performed after this date must comply with the new rule. If a project contract has been awarded with specifications from the previous Chapter 425, the building owner and contractor may need to re-bid or renegotiate the contract to achieve savings or cover additional costs that result from implementing the new rule.

Section A. Outline of Requirements for Different Activities

1. Removal of Exterior Cementitious products

- Siding – Homeowner removal from single-family home – EXEMPT from all Chapter 425 requirements; compliance with solid waste transport and disposal regulations (Chapter 400 et seq.) still required.
- All other*:
 - Notify DEP.
 - Licensed company – can be “Limited Asbestos Abatement Contractor” per 425.4.B(3); only need to submit SOPs for cementitious siding removals.
 - Certified supervisor and workers – can be “certified-by-rule” per 425.5.A(2)(b); need OSHA 12-hour competent person or 8-hour worker respectively plus documentation of training at work site.
 - Use alternative work practices in 425.7.D(2), including visual evaluation for clearance (air clearances are not required).

2. Flooring

- Intact floor tile removal by infrared tile lift machine or heat guns so that tile comes up whole – EXEMPT from all Chapter 425 requirements; compliance with solid waste transport and disposal regulations (Chapter 400 et seq.) still required.
- Demolition by large equipment – intact flooring left in place*:
 - Notify DEP.
 - Licensed company – can be “Limited Asbestos Abatement Contractor” per 425.4.B(3); only need to submit SOPs for demolition by large equipment with ACM flooring in place.
 - Certified supervisor and workers – can be “certified-by-rule” per 425.5.A(2)(c); need OSHA 12-hour competent person or 8-hour worker respectively plus documentation of training at work site.
 - Use alternative work practices in 425.7.B, including visual evaluation for clearance (air clearances are not required).
- All other*:
 - Notify DEP
 - Fully licensed company per 425.4.B.
 - Fully trained and certified supervisor and workers per 425.5.
 - Use standard work practices in 425.7.A, including visual evaluation and air sampling for clearance.

3. Removal of Asbestos-Containing Roofing

- Asphaltic and petroleum-based asbestos-containing roofing materials **not** sanded grinded abraded or cut with a mechanical roof cutter – EXEMPT from all Chapter 425 requirements; compliance with solid waste transport and disposal regulations (Chapter 400 et seq.) still required.
- All other*:
 - Notify DEP.
 - Licensed company – can be “Limited Asbestos Abatement Contractor” per 425.4.B(3); only need to submit SOPs for roofing removals.
 - Certified supervisor and workers – can be “certified-by-rule” per 425.5.A(2)(a); need OSHA 12-hour competent person or 8-hour worker respectively plus documentation of training at work site.
 - Use alternative work practices in 425.7.D(1), including visual evaluation for clearance (air clearances are not required).

4. All other asbestos abatement projects* – except activities noted as exempt or not subject to rule at 425.2.E and 425.2.F:

- Notify DEP
- Fully licensed company per 425.4.B.
- Fully trained and certified supervisor and workers per 425.5.
- Use standard work practices in 425.7.A, including visual evaluation and air sampling for clearance.
- Can request work practice variances per 425.7.F

*Must follow “Pre-Abatement Requirements” of Section 425.6.

Section B – Frequently Asked Questions

1. I heard that there are some types of projects that no longer have to be done by an asbestos abatement contractor. Is this true? What about “whole and intact” removals?

The new rule identifies some common activities that impact non-friable asbestos materials and because of the way each activity is done, do not create a friable material. These activities are not subject to the rules, so do not need to be performed by an asbestos abatement contractor. These activities are listed on pages 11 & 12 in Section 2.F.

All other activities that involve asbestos-containing materials either impact friable asbestos or, because of the nature of the activity, have the potential to create friable asbestos, and are therefore subject to the rule and must be performed by a licensed asbestos abatement contractor.

The term “intact” is used in this rule (as it is used by OSHA), to characterize the condition of floor tile before removal. The removal of intact acm floor tiles by heat gun or infrared tile lift machines where the tiles come up whole is not subject to this rule. The removal of intact cementitious acm products (other than transite siding removed by single-family homeowners) is subject to the rule even when you think the product is likely to come off whole. There are reduced work practices specified for removal of exterior cementitious products in Section 7.D(2) (starting on page 49). Also, you can request a non-standard variance from certain standard work practice requirements for projects with conditions and work practices that create a strong likelihood that the intact non-friable acm building product will be removed whole.

2. The definition of “project” says that there cannot be a lapse of more than 10 working days in the project. What does this mean?

This means that if there is no abatement activity in a building for more than 10 days, you must submit a new notification before commencing additional abatement activities in that building.

3. I want to take advantage of the five working day notification period, but am not sure if I can count the day the project starts as one of the days required by the notification. Can you explain this?

You cannot count the first day of work on a project as part of the time period required for notification. Notifications must either be postmarked 10 calendar days prior to the start of a project or be delivered to the Department at least 5 working days prior to the start of a project. The easiest way to count days is to backwards, starting with the day before the scheduled start of a project as day 1. For example, if you plan to start a project on a Wednesday and there are no state holidays during the time period, you would count as follows:

- to figure the postmark date 10 calendar days prior to the start day, Tuesday (the day before) is day 1, Monday is day 2, Sunday is day 3, Saturday is day 4, Friday is day 5, Thursday is day 6, Wednesday is day 7, Tuesday is day 8, Monday is day 9, and Sunday (that is, 2 Sundays prior to the Wednesday start date) is 10 calendar days prior to the start date you planned; and
- to figure 5 working days prior to the planned Wednesday start date, Tuesday (the day before) is working day 1, Monday is working day 2, Friday is working day 3, Thursday is working day 4, and the Wednesday before is working day 5; i.e., the notification must be delivered to the Department no later than the previous Wednesday to start a job on Wednesday.

4. Project notifications now must include the “dates of actual removal/repair”; often it is difficult to know exactly when actual removal will happen, especially five to ten days before project set-up is scheduled to start. How can a contractor comply with this requirement when schedules need to change?

The person submitting the initial notification needs to note the actual removal/repair dates to the best of their knowledge at the time the notification is submitted. If these dates change prior to the start of the project, the last paragraph of section 3.B(3) of the rule allows notification of changes to these actual removal/repair dates to be submitted to the Department by fax or telephone contact with Department staff no less than 24 hours prior to the new start date for the actual removal/repair activity.

5. The new rule requires the Training Director for a licensed Training Provider to have a post-secondary degree in Adult education or successful completion of a “Train-the Trainer” course acceptable to the Department. If I don’t have this, is my license still be valid once the new rule is effective?

Section 4.E(2)(f) allows you one year to gain the education necessary to meet this requirement, so your license will not be invalidated on the effective date of this rule. Rob Clark (207-287-7199) can help you identify “Train-the-Trainer” courses that will meet the requirements specified in Section 4.E(1)(f) of the rule.

6. My training certificate expires on a different date than my asbestos certification, and this has caused me problems in the past when working on school and other federally-regulated projects. Do the new rules include provisions for avoiding these problems?

When you renew your Maine certification under the new rule, your new Maine certification will expire on the last day of the month that your most recent training certificate for the discipline expires. This means that for the next year only, when you renew your Maine certification it may be valid for less than 12 months. This will put your refresher training certificate and Maine certification on the same expiration schedule, thus avoiding problems with being certified but not currently trained for working on federally-regulated projects.

7. Have there been any other changes in training requirements?

Air and Bulk Analysts no longer need to take a refresher training course. They must participate in an annual analyst QA/QC training offered as part of a Maine-licensed laboratory’s QA/QC program, and submit evidence of this participation as part of their renewal application. Please read Section 5.E(2) on pages 35 & 36 for complete details.

8. Federal law requires a pre-demolition/renovation impact survey on all buildings other than residential building with less than five units. Now the Maine “Asbestos Management Regulations” have a requirement that appears similar in Section 6.A. Are the state and federal requirements the same? Does meeting one entity’s requirement ensure compliance with the other’s?

Maine law regulates any project impacting more than 3 square feet or three linear feet of asbestos; federal regulations apply only to projects involving more than 160 square feet or 260 linear feet of asbestos in buildings other than residential buildings with less than 5 units. Therefore Maine regulations apply in more circumstances and are sometimes more stringent than federal regulations. This is true for this pre-demolition/renovation impact survey. Maine regulation specifies that the pre-demolition/renovation survey must be performed by a Maine-certified Asbestos Inspector, while federal regulation only specifies that the survey be performed by someone knowledgeable about asbestos.

Maine also requires a pre-demolition/renovation survey in pre-1981 residential buildings with 2-4 units, but allows this to be performed by someone knowledgeable about asbestos (i.e., the person does not need to be certified as an Asbestos Inspector). If you meet the pre-demolition/renovation survey requirements in the new Maine regulation, you will meet the federal requirement. If you have someone other than a Maine-certified Asbestos Inspector to

perform the survey in buildings other than residential buildings with less than 5 units, you may be in compliance with the federal regulation, but will be out of compliance with Maine's regulation.

9. The requirements for analysis of bulk samples in Section 6.B(2)(c) says that one must perform TEM, point counting, or other approved EPA method if the PLM result from friable materials (e.g., surfacing materials or TSI) is less than 10%. Can I just assume the material is asbestos rather than running it through TEM or point counting?

Yes, you can assume the material to be ACM. If you do assume the material to be acm, be sure to provide the owner with a bulk sampling disclosure form.

10. How have the project design requirements changed?

Any changes to the original project design must be approved in writing by a Maine-licensed Asbestos Abatement Design Consultant and received by the original designer prior to implementation. The project design must include a written air monitoring plan which specifies the number of air clearance samples to be included in the project contract. It also must include a description and scope of work for pre-cleaning any existing asbestos-containing debris within the boundaries of the regulated area specified in the design.

11. What is the purpose of the disclosure forms required by Section 6.D? Can I use my own forms?

The disclosure forms are intended to ensure that building owners are provided with information on contractor/consultant relationships as they consider their hiring options, and on the purpose and benefits of bulk sampling and project monitoring. Most Maine citizens are not familiar with the requirements of Maine's asbestos laws and with professionals in the asbestos industry. By providing the general public with information about their options when contracting for asbestos services, contractors and consultants will be competing on a more level playing field and can avoid the appearance of collusion and/or conflict-of-interest.

The Department provides suggested language for the disclosures. You may use this language on your own letterhead if you like. You may also propose alternative language for these disclosures, but this alternative language must be approved by the DEP before you can use it. If you are interested in using other language than that provided by the DEP, please submit your alternative language proposals to the Department, attention: Carole Cifrino.

12. What are the major changes in standard abatement work practices?

- The standard abatement work practices (Section 7.A) generally requires containment to be constructed with 2-layers of 4-mil polyethylene sheeting, but allows the use of 1-layer

for glovebag removals exceeding 30 linear feet and for flooring projects (the surface to be abated does not need to be covered).

- The clean room of the decon must be a minimum of 24 square feet for projects involving 3 or fewer certified individuals entering the regulated area per shift, and a minimum of 32 square feet for all other projects. If site-specific circumstance preclude constructing a clean room to these minimum specifications, you may request a non-standard variance to use a smaller clean room.
- Clothing and boots are allowed in the regulated area provided they are clearly and visibly labeled as “Asbestos Clothing”, and do not leave the equipment room unless containerized for reuse inside a regulated area, cleaned, or disposed of.
- Asbestos waste bags, both the inside and outside bags, must be goosenecked and taped.

13. Can I still get a variance to forego containment over “non-porous” surfaces?

No. Defining a non-porous surface has been problematic and inconsistent at best; constructing containment is the only way to ensure asbestos fibers are not left on surfaces when the project is completed. Specific situations in which no containment is required are described in Section 7.F(1)(d).

14. What type of containment is needed when using glovebags, and do I have to request a variance to standard work practices to do anything other than 2-layer containment on glovebag jobs?

You can do projects using less than 30 contiguous feet of glovebags without containment. You can also do projects with any number of non-contiguous glovebags without containment provided the glovebags used are no larger than 60 inches by 60 inches. You must request a standard variance to forego containment for projects conducted under both these sets of circumstances. All other glovebag projects require single-layer containment; you do not need to request a variance to use glovebags with single-layer containment.

15. Are there certain types of projects on which I can use a single-layer containment?

Yes. The rule specifies that single-layer containment is required for contiguous glovebag removals greater than 30 linear feet and for flooring projects. You do not need to request a variance to use single-layer containment on these projects.

Single-layer containment is also allowed when requested as a “standard variance” for the removal using “wrap and cut” methods of components covered with thermal system insulation that is not in good condition or that has a high probability of releasing fibers (e.g., no covering or covered with lag cloth) [see Section 7.F(1)(e)].

16. What are the major changes in clearance requirements?

- The regulated area must be dry before final visuals and air clearances are conducted.
- The minimum volume permissible for air clearance sampling has increased from 1200 to 2452 liters of air, at a maximum flow rate of 16 liters of air per minute.
- An asbestos air monitor or project supervisor must perform a visual inspection of the work area after teardown; if visible debris is present, the area must be recleaned in accordance with Section 8.B(3).

17. I 'm a Training Provider and I've heard that this rule allows me to give the final exam for initial courses. How will the DEP know who has passed the course?

Yes, the rule now allows Training Providers to administer exams at the conclusion of initial training courses. Section 10.E(1)(d) requires that Training Providers submit course results to the Department within 5 working days of the end of the course. The results must include the type of course and the names, social security numbers and exam scores for all course participants. This is required for both initial and refresher courses.